

ASSEMBLY BILL

No. 957

Introduced by Assembly Member Haynes

February 18, 2005

An act to add Chapter 12.9 (commencing with Section 7090) to Division 7 of Title 2 of the Government Code, and to amend Sections 17039 and 23036 of, to add Sections 17052.77 and 23677 to, and to add and repeal Sections 17053.93 and 23693 of, the Revenue and Taxation Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 957, as introduced, Haynes. California New Markets Venture Capital Program.

(1) Existing law provides for various programs to promote economic development opportunities in the state.

This bill would enact the California New Markets Venture Capital Program Act of 2005, pursuant to which the Business, Transportation and Housing Agency would be required to establish the California New Markets Venture Capital Program. Under the program, the agency would be authorized to enter into participation agreements with eligible California New Markets Venture Capital companies, guarantee debentures of the companies to enable them to make developmental venture capital investments in smaller enterprises in low- or moderate-income geographic areas, and make grants to the companies and other entities to provide operational assistance to smaller enterprises financed or expected to be financed, by those companies, as provided. This bill would condition the operation of these provisions upon the agency receiving a specified notice from the Treasurer. Violation of the provisions of the bill would be a misdemeanor.

By creating a new crime, this bill would impose a state-mandated local program.

(2) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for 4 taxable years beginning on or after the first January 1 that follows the receipt of a specified notice by the Franchise Tax Board for a qualified equity investment in qualified investment entities that invest in qualified low-income community businesses. This bill would specify that the credit for the first 3 taxable years is to be computed at 5% of the amount paid for a qualified equity investment, and is to be computed at 6% of the amount paid for the qualified equity investment for the 4th taxable year following the initial year of purchase. This bill would also allow a credit for those same taxable years in an amount equal to 20% of the fair market value of any qualified contribution, as defined, to a nonprofit housing or community development organization, as provided.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature in enacting this
- 2 act to do all of the following:
- 3 (a) To promote economic development and the creation of
- 4 wealth and job opportunities in low- or moderate-income
- 5 geographic areas and among individuals living in those areas by
- 6 encouraging developmental venture capital investments in
- 7 smaller enterprises primarily located in those areas.
- 8 (b) To establish a developmental venture capital program, with
- 9 the mission of addressing the unmet equity investment needs of
- 10 small enterprises located in low- and moderate-income
- 11 geographic areas, to be administered by the Business,
- 12 Transportation and Housing Agency, to do all of the following:

1 (1) To enter into participation agreements with California New
2 Markets Venture Capital companies.

3 (2) To guarantee debentures of California New Markets
4 Venture Capital companies to enable each of these companies to
5 make developmental venture capital investments in smaller
6 enterprises in low- or moderate-income geographic areas.

7 (3) To make grants to California New Markets Venture
8 Capital companies, and to other entities, for the purpose of
9 providing operational assistance to smaller enterprises financed,
10 or expected to be financed, by these companies.

11 SEC. 2. Chapter 12.9 (commencing with Section 7090) is
12 added to Division 7 of Title 2 of the Government Code, to read:

13
14 CHAPTER

15 12.9. CALIFORNIA NEW MARKETS VENTURE CAPITAL PROGRAM
16

17 7090. This chapter shall be known and may be cited as the
18 California New Markets Venture Capital Program Act of 2005.

19 7090.2. For purposes of this chapter the following definitions
20 apply:

21 (a) “California New Markets Venture Capital company”
22 means a company that meets both of the following criteria:

23 (1) It has been granted final approval by the Business,
24 Transportation and Housing Agency pursuant to subdivision (e)
25 of Section 7090.7.

26 (2) It has entered into a participation agreement.

27 (b) “Agency” means the Business, Transportation and Housing
28 Agency.

29 (c) “Developmental venture capital” means capital in the form
30 of equity investments in businesses made with a primary
31 objective of fostering economic development in low- or
32 moderate-income geographic areas.

33 (d) “Low- or moderate-income geographic area” means either
34 of the following:

35 (1) A census tract, or the equivalent county division as defined
36 by the Bureau of the Census for purposes of defining poverty
37 areas, in which any of the following conditions exist:

38 (A) The poverty rate is at least 20 percent.

39 (B) In the case of a census tract or division located within a
40 metropolitan area, the median family income for the tract or

1 division does not exceed the greater of 80 percent of the
2 statewide median family income or 80 percent of the
3 metropolitan area median family income.

4 (C) In the case of a census tract or division not located within
5 a metropolitan area, the median family income for the tract or
6 division does not exceed 80 percent of the statewide median
7 family income.

8 (2) Any area located within any of the following:

9 (A) An historically underutilized business zone (HUBZone),
10 as defined in Section 3(p) of the federal Small Business Act (15
11 U.S.C. Sec. 632(p)).

12 (B) An urban empowerment zone or an urban enterprise
13 community, as designated by the Secretary of the Department of
14 Housing and Urban Development.

15 (C) A rural empowerment zone or a rural enterprise
16 community, as designated by the Secretary of the Department of
17 Agriculture.

18 (e) “Operational assistance” means management, marketing,
19 and other technical assistance that assists a small business
20 concern with business development.

21 (f) “Participation agreement” means an agreement, between
22 the agency and a company granted final approval under
23 subdivision (e) of Section 7090.7, that meets both of the
24 following criteria:

25 (1) It details the company’s operating plan and investment
26 criteria.

27 (2) It requires the company to make investments in smaller
28 enterprises at least 80 percent of which are located in low- or
29 moderate-income geographic areas.

30 (g) “Specialized small business investment company” means
31 any small business investment company that meets both of the
32 following criteria:

33 (1) It invests solely in small business concerns that contribute
34 to a well-balanced statewide economy by facilitating ownership
35 in those concerns by persons whose participation in the free
36 enterprise system is hampered because of social or economic
37 disadvantages.

38 (2) It is organized or chartered under state business or
39 nonprofit corporation statutes, or formed as a limited partnership.

1 7090.5. The agency shall establish a California New Markets
2 Venture Capital Program, pursuant to which the agency may do
3 all of the following:

4 (a) Enter into participation agreements with companies
5 granted final approval under subdivision (e) of Section 7090.7
6 for the purposes of this chapter.

7 (b) Guarantee the debentures issued by California New
8 Markets Venture Capital companies as provided in Section 7091.

9 (c) Make grants to California New Markets Venture Capital
10 companies, and to other entities, under Section 7091.7.

11 (d) This section shall become operative on the day after the
12 agency receives notice from the Treasurer pursuant to
13 subdivision (c) of Section 7091.2.

14 7090.7. (a) A company may apply to participate, as a
15 California New Markets Venture Capital company, in the
16 program established under this chapter if it meets all of the
17 following criteria:

18 (1) The company is a newly formed for-profit entity or a
19 newly formed for-profit subsidiary of an existing entity.

20 (2) The company has a management team with experience in
21 community development financing or relevant venture capital
22 financing.

23 (3) The company has a primary objective of economic
24 development of low- or moderate-income geographic areas.

25 (b) To participate, as a California New Markets Venture
26 Capital company, in the program established under this chapter,
27 a company meeting the eligibility requirements set forth in
28 subdivision (a) shall submit an application to the agency that
29 includes all of the following:

30 (1) A business plan describing how the company intends to
31 make successful developmental venture capital investments, at
32 least 80 percent of which shall be in identified low- or
33 moderate-income geographic areas.

34 (2) Information regarding the community development finance
35 or relevant venture capital qualifications and the general
36 reputation of the company's management.

37 (3) A description of how the company intends to work with
38 community organizations and to seek to address the unmet
39 capital needs of the communities served.

1 (4) A proposal describing how the company will use the grant
2 funds provided under this chapter to provide operational
3 assistance to smaller enterprises financed by the company,
4 including information regarding whether the company will use
5 licensed professionals, where applicable, on the company's staff
6 or from an outside entity.

7 (5) With respect to binding commitments to be made to the
8 company under this chapter, an estimate of the ratio of cash to
9 in-kind contributions.

10 (6) A description of the criteria to be used to evaluate whether
11 and to what extent the company meets the objectives of the
12 program established under this chapter.

13 (7) Information regarding the management and financial
14 strength of any parent firm, affiliated firm, or any other firm
15 essential to the success of the company's business plan.

16 (8) A description of the company's community action plan,
17 which shall be developed by the company and the officers of at
18 least two nonprofit community development corporations who
19 have agreed with the company, in writing, to assist in
20 implementing the plan. The community action plan shall contain
21 at least the following elements:

22 (A) A promise that the company will ensure that the funds it
23 receives under this chapter will be invested along a major
24 thoroughfare and within a defined geographic area that has a
25 15-year history of commercial and residential blight and
26 developmental stagnancy, as documented by a state or local
27 government authority.

28 (B) A description of how the company's investment outcomes
29 will do both of the following:

30 (i) Enhance technical assistance to small business, enhance
31 opportunities for microbusinesses, attract and retain businesses in
32 the area, increase access to capital and markets, and enhance the
33 entrepreneurial climate in the area by controlling and reducing
34 crime in the area.

35 (ii) Revitalize the neighborhoods in the area by eliminating
36 blight, enhancing the availability of quality affordable housing,
37 transit corridor or automobile parking space developments, the
38 organization and design of the area, and promoting the area for
39 additional economic development.

40 (9) Any other information the agency may require.

1 (c) (1) The agency shall conditionally approve companies to
2 participate in the California New Markets Venture Capital
3 Program from among companies submitting applications under
4 subdivision (b).

5 (2) In selecting companies under paragraph (1), the agency
6 shall consider all of the following:

7 (A) The likelihood that the company will meet the goals of its
8 business plan.

9 (B) The experience and background of the company's
10 management team.

11 (C) The need for developmental venture capital investments in
12 the geographic areas in which the company intends to invest.

13 (D) The extent to which the company will concentrate its
14 activities on serving the geographic areas in which it intends to
15 invest.

16 (E) The likelihood that the company will be able to satisfy the
17 conditions set forth under subdivision (d).

18 (F) The extent to which the activities proposed by the
19 company will expand economic opportunities in the geographic
20 areas in which the company intends to invest.

21 (G) The strength of the company's proposal to provide
22 operational assistance under this chapter as the proposal relates to
23 the ability of the applicant to meet applicable cash requirements
24 and properly utilize in-kind contributions, including the use of
25 resources for the services of licensed professionals whether
26 provided by the company's staff or by persons outside of the
27 company.

28 (H) Any other factors deemed appropriate by the agency.

29 (3) The agency shall select companies under paragraph (1) in
30 a way that promotes investment statewide.

31 (d) The agency shall grant each conditionally approved
32 company a period of time, not to exceed two years, to satisfy
33 both of the following requirements:

34 (1) Each conditionally approved company shall raise not less
35 than five million dollars (\$5,000,000) of private capital or
36 binding capital commitments from one or more investors, from
37 nonstate sources, who meet criteria established by the agency.

38 (2) In order to provide operational assistance to smaller
39 enterprises expected to be financed by the company, each

1 conditionally approved company shall meet both of the following
2 criteria:

3 (A) The company shall have binding commitments for cash or
4 in-kind contributions that meet all of the following criteria:

5 (i) The contributions are from any sources other than the
6 agency that meet criteria established by the agency.

7 (ii) The contributions are payable or available over a multiyear
8 period acceptable to the agency, but not to exceed 10 years.

9 (iii) The contributions are in an amount of not less than 30
10 percent of the total amount of capital and commitments raised
11 under paragraph (1).

12 (B) The company shall have purchased an annuity that is
13 subject to all of the following conditions:

14 (i) The annuity is purchased from an insurance company
15 acceptable to the agency.

16 (ii) The annuity is purchased using funds, other than the funds
17 raised under paragraph (1), from any source other than the
18 agency.

19 (iii) The annuity yields cash payments over a multiyear period
20 acceptable to the agency, but not to exceed 10 years, in an
21 amount of not less than 30 percent of the total amount of the
22 capital and commitments raised under paragraph (1).

23 (C) The company shall have binding commitments for cash or
24 in-kind contributions of the type described in subparagraph (A)
25 and shall have purchased an annuity of the type described in
26 subparagraph (B), which in the aggregate make available, over a
27 multiyear period acceptable to the agency, but not to exceed 10
28 years, an amount not less than 30 percent of the total amount of
29 the capital and commitments raised under paragraph (1).

30 (e) The agency shall grant to a company conditionally
31 approved under subdivision (c) final approval to participate,
32 pursuant to a participation agreement, in the program established
33 under this chapter after the company has met the requirements set
34 forth in subdivision (d).

35 (f) This section shall become operative on the day after the
36 agency receives notice from the Treasurer pursuant to
37 subdivision (c) of Section 7091.2.

38 7091. (a) (1) The agency may guarantee the timely payment
39 of principal and interest, as scheduled, on debentures issued by
40 any California New Markets Venture Capital company.

1 (2) The agency may make guarantees under this section on the
2 terms and conditions it deems appropriate, except that the term of
3 any debenture guaranteed under this section shall not exceed 15
4 years.

5 (3) The agency may guarantee the debentures issued by a
6 California New Markets Venture Capital company only to the
7 extent that the total face amount of outstanding guaranteed
8 debentures of that company does not exceed 150 percent of the
9 private capital of the company, as determined by the agency. For
10 the purposes of this paragraph, private capital may include
11 capital that is considered to be state funds, if that capital is
12 contributed by an investor that is not an agency of the state.

13 (b) The agency may issue trust certificates representing
14 ownership of all or a fractional part of debentures issued by a
15 California New Markets Venture Capital company and
16 guaranteed by the agency under this chapter.

17 (c) This section shall become operative on the day after the
18 agency receives notice from the Treasurer pursuant to
19 subdivision (c) of Section 7091.2.

20 7091.2. (a) There is hereby created in the Community and
21 Economic Development Fund established pursuant to Section
22 91558.5 the California New Markets Venture Capital Account.
23 Upon appropriation by the Legislature, moneys in the account
24 shall be used exclusively to securitize and fund debenture
25 guarantees made by the agency under Section 7091 and to make
26 the grants authorized by Section 7091.7. The account shall be the
27 exclusive source of moneys for these purposes.

28 (b) Moneys in the account shall consist of the proceeds of
29 settlements, negotiations, and agreements made with any entity
30 by and at the discretion of the Governor, Treasurer, the Insurance
31 Commissioner, and the Attorney General that are not otherwise
32 required by law to be deposited into another fund. The Treasurer
33 may issue public debt in the form of bonds for the purposes of
34 this chapter, as otherwise provided by law, and the proceeds from
35 this issuance shall be deposited into the account. The Treasurer
36 may securitize those bonds with the proceeds of the settlements,
37 negotiations, and agreements described in this subdivision.

38 (c) The Treasurer shall immediately notify the Franchise Tax
39 Board and the agency, in writing, after making a deposit into the
40 account.

1 7091.5. (a) The agency may charge any fees it deems
2 appropriate with respect to any guarantee or grant issued under
3 this chapter.

4 (b) This section shall become operative on the day after the
5 agency receives notice from the Treasurer pursuant to
6 subdivision (c) of Section 7091.2.

7 7091.7. (a) (1) The agency may make grants to California
8 New Markets Venture Capital companies and to other entities, as
9 authorized by this chapter, to provide operational assistance to
10 smaller enterprises financed, or expected to be financed, by those
11 companies or other entities.

12 (2) Grants made under this subdivision shall be made over a
13 multiyear period not to exceed 10 years, under any other terms
14 the agency may require.

15 (3) (A) In accordance with this section, the agency may make
16 grants to specialized small business investment companies to
17 provide operational assistance to smaller enterprises financed, or
18 expected to be financed, by those companies.

19 (B) (i) The proceeds of a grant made under this paragraph
20 may be used by the company receiving the grant only to provide
21 operational assistance in connection with an equity investment,
22 made with capital raised after January 1, 2005, in a business
23 located in a low- or moderate-income geographic area.

24 (ii) Operational assistance referred to in clause (i) shall not be
25 provided in connection with more than one equity investment.

26 (C) A specialized small business investment company shall be
27 eligible for a grant under this section only if the company
28 submits to the Secretary of Business, Transportation and
29 Housing, in the form and manner the secretary may require, a
30 plan for use of the grant.

31 (4) (A) The amount of a grant made under this subdivision to
32 a California New Markets Venture Capital company shall be
33 equal to the cash or in-kind resources raised by the company
34 pursuant to paragraph (2) of subdivision (d) of Section 7090.7.

35 (B) The amount of a grant made under this subdivision to any
36 entity other than a California New Markets Venture Capital
37 company shall be equal to the cash or in-kind resources raised by
38 the entity in accordance with the requirements applicable to
39 California New Markets Venture Capital companies set forth in
40 paragraph (2) of subdivision (d) of Section 7090.7.

1 (5) If the amount made available to carry out this section is
2 insufficient for the agency to provide grants in the amounts
3 provided for in paragraph (4), the agency shall make pro rata
4 reductions in the amounts otherwise payable to each company
5 and entity under that paragraph.

6 (b) (1) The agency may make supplemental grants to
7 California New Markets Venture Capital companies and to other
8 entities, as authorized by this chapter, under the terms the agency
9 may require, to provide additional operational assistance to
10 smaller enterprises financed, or expected to be financed, by the
11 companies.

12 (2) The agency may require, as a condition of any
13 supplemental grant made under this subdivision, that the
14 company or entity receiving the grant provide from cash or
15 in-kind resources, other than those provided by the agency, a
16 matching contribution equal to the amount of the supplemental
17 grant.

18 (c) The assistance made available under this section shall not
19 be used for any operating expense of a California New Markets
20 Venture Capital company or a specialized small business
21 investment company.

22 (d) This section shall become operative on the day after the
23 agency receives notice from the Treasurer pursuant to
24 subdivision (c) of Section 7091.2.

25 7092.2. (a) Each California New Markets Venture Capital
26 company that participates in the program established under this
27 chapter shall be subject to examinations made at the direction of
28 the agency in accordance with this section.

29 (b) Examinations under this section may be conducted with
30 the assistance of a private sector entity that has both the
31 qualifications and the expertise necessary to conduct those
32 examinations.

33 (c) (1) (A) The agency may assess the cost of examinations
34 under this section, including compensation of the examiners,
35 against the company examined.

36 (B) Any company against which the agency assesses costs
37 under this paragraph shall pay those costs.

38 (2) Funds collected under this section shall be used to defray
39 the expenses of the agency in enforcing the requirements of this
40 chapter.

1 (d) This section shall become operative on the day after the
2 agency receives notice from the Treasurer pursuant to
3 subdivision (c) of Section 7091.2.

4 7092.5. (a) Whenever, in the judgment of the agency, a
5 California New Markets Venture Capital company or any other
6 person has engaged or is about to engage in any acts or practices
7 that constitute or will constitute a violation of any provision of
8 this chapter, or of any rule or regulation promulgated pursuant to
9 this chapter, or of any order issued under this chapter, the
10 Attorney General may make application to a court of competent
11 jurisdiction on behalf of the agency for an order enjoining those
12 acts or practices, or for an order enforcing compliance with the
13 provision, rule, regulation, or order, and upon a showing by the
14 agency that the California New Markets Venture Capital
15 company or other person has engaged or is about to engage in
16 any of those acts or practices, a permanent or temporary
17 injunction, restraining order, or other order, shall be granted
18 without bond.

19 (b) In any proceeding under subdivision (a), the court as a
20 court of equity may, to the extent that court deems necessary,
21 take exclusive jurisdiction of the New Market Venture Capital
22 company and the assets thereof, wherever located, and the court
23 shall have jurisdiction in that proceeding to appoint a trustee or
24 receiver to hold or administer under the direction of the court the
25 assets so possessed.

26 (c) Upon request of the agency, the court may appoint the
27 agency to act as a trustee or receiver of a California New Markets
28 Venture Capital company, unless the court deems that
29 appointment inequitable or otherwise inappropriate by reason of
30 the special circumstances involved.

31 (d) This section shall become operative on the day after the
32 agency receives notice from the Treasurer pursuant to
33 subdivision (c) of Section 7091.2.

34 7092.7. (a) With respect to any California New Markets
35 Venture Capital company that violates or fails to comply with
36 any provision of this chapter, any regulation issued under this
37 chapter, or of any participation agreement entered into under this
38 chapter, the agency may do both of the following:

39 (1) Void the participation agreement between the agency and
40 the company.

1 (2) Cause the company to forfeit all of the rights and
2 privileges derived by the company from this chapter.

3 (b) (1) Before the agency may cause a California New
4 Markets Venture Capital company to forfeit rights or privileges
5 under subdivision (a), a court of competent jurisdiction shall
6 have found that the company committed a violation, or failed to
7 comply, in a cause of action brought for that purpose in the
8 proper jurisdiction.

9 (2) Each cause of action brought by the state under this
10 subdivision shall be brought by the Attorney General on behalf
11 of the agency.

12 (c) This section shall become operative on the day after the
13 agency receives notice from the Treasurer pursuant to
14 subdivision (c) of Section 7091.2.

15 7093. (a) Whenever any California New Markets Venture
16 Capital company violates a provision of this chapter, a regulation
17 issued pursuant to this chapter, or a participation agreement
18 entered into pursuant to this chapter, by reason of its failure to
19 comply with its terms or by reason of its engaging in any act or
20 practice that constitutes or will constitute a violation thereof, that
21 violation shall also be deemed to be a misdemeanor committed
22 by any person who, directly or indirectly, authorizes, orders,
23 participates in, causes, brings about, counsels, aids, or abets in
24 the commission of any acts, practices, or transactions that
25 constitute or will constitute, in whole or in part, that violation.

26 (b) It is a misdemeanor for any officer, director, employee,
27 agent, or other participant in the management or conduct of the
28 affairs of a California New Markets Venture Capital company to
29 engage in any act or practice, or to omit any act or practice, in
30 breach of the person's fiduciary duty as that officer, director,
31 employee, agent, or participant if, as a result thereof, the
32 company suffers or is in imminent danger of suffering financial
33 loss or other damage.

34 (c) Except with the written consent of the agency, it is a
35 misdemeanor for any person to do either of the following:

36 (1) To take office as an officer, director, or employee of any
37 California New Markets Venture Capital company, or to become
38 an agent or participant in the conduct of the affairs or
39 management of such a company, if either of the following have
40 occurred:

1 (A) The person has been convicted of a felony, or any other
2 criminal offense involving dishonesty or a breach of trust.

3 (B) The person has been found civilly liable in damages, or
4 has been permanently or temporarily enjoined by an order,
5 judgment, or decree of a court of competent jurisdiction, by
6 reason of any act or practice involving fraud or a breach of trust.

7 (2) To continue to serve in any of the capacities described in
8 paragraph (1), if either of the following occurs:

9 (A) The person is convicted of a felony, or any other criminal
10 offense involving dishonesty or breach of trust.

11 (B) The person is found civilly liable in damages, or is
12 permanently or temporarily enjoined by an order, judgment, or
13 decree of a court of competent jurisdiction, by reason of any act
14 or practice involving fraud or breach of trust.

15 (d) This section shall become operative on the day after the
16 agency receives notice from the Treasurer pursuant to
17 subdivision (c) of Section 7091.2.

18 7093.2. (a) The agency may remove or suspend any director
19 or officer of any California New Markets Venture Capital
20 company for noncompliance with the provisions of this chapter,
21 subject to notice and hearing.

22 (b) This section shall become operative on the day after the
23 agency receives notice from the Treasurer pursuant to
24 subdivision (c) of Section 7091.2.

25 7093.5. (a) The agency may adopt regulations necessary to
26 carry out the purposes of this chapter.

27 (b) This section shall become operative on the day after the
28 agency receives notice from the Treasurer pursuant to
29 subdivision (c) of Section 7091.2.

30 7093.7. (a) The agency shall conduct a study on the impact of
31 the program established by this chapter, including, but not
32 limited to, the costs to the state of, and revenues generated by,
33 the tax credits established by the act that added this chapter.
34 Notwithstanding Section 7550.5, the agency shall report the
35 results of the study to the Governor and the Legislature no later
36 than the second January 1 that follows the operative date of this
37 section.

38 (b) This section shall become operative on the day after the
39 agency receives notice from the Treasurer pursuant to
40 subdivision (c) of Section 7091.2.

SEC. 3. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term “net tax” means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the “net tax” shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against “net tax” in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions, except for those that are allowed to reduce “net tax” below the tentative minimum tax, as defined by Section 17062.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits that are allowed to reduce “net tax” below the tentative minimum tax, as defined by Section 17062.

(6) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(7) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17061 (relating to refunds pursuant to the Unemployment Insurance Code) and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the

- 1 separate tax on lump-sum distributions) below the tentative
2 minimum tax, as defined by Section 17062, except the following
3 credits:
- 4 (A) The credit allowed by Section 17052.2 (relating to teacher
5 retention tax credit).
- 6 (B) The credit allowed by former Section 17052.4 (relating to
7 solar energy).
- 8 (C) The credit allowed by former Section 17052.5 (relating to
9 solar energy, repealed on January 1, 1987).
- 10 (D) The credit allowed by former Section 17052.5 (relating to
11 solar energy, repealed on December 1, 1994).
- 12 (E) The credit allowed by Section 17052.12 (relating to
13 research expenses).
- 14 (F) The credit allowed by former Section 17052.13 (relating to
15 sales and use tax credit).
- 16 (G) The credit allowed by former Section 17052.15 (relating
17 to Los Angeles Revitalization Zone sales tax credit).
- 18 (H) The credit allowed by Section 17052.25 (relating to the
19 adoption costs credit).
- 20 (I) The credit allowed by Section 17052.77 (*relating to*
21 *qualified equity investment credit*).
- 22 (*J*) The credit allowed by Section 17053.5 (relating to the
23 renter's credit).
- 24 ~~(J)~~
- 25 (K) The credit allowed by former Section 17053.8 (relating to
26 enterprise zone hiring credit).
- 27 ~~(K)~~
- 28 (L) The credit allowed by former Section 17053.10 (relating to
29 Los Angeles Revitalization Zone hiring credit).
- 30 ~~(L)~~
- 31 (M) The credit allowed by former Section 17053.11 (relating
32 to program area hiring credit).
- 33 ~~(M)~~
- 34 (N) For each taxable year beginning on or after January 1,
35 1994, the credit allowed by former Section 17053.17 (relating to
36 Los Angeles Revitalization Zone hiring credit).
- 37 ~~(N)~~
- 38 (O) The credit allowed by Section 17053.33 (relating to
39 targeted tax area sales or use tax credit).
- 40 ~~(O)~~

1 (P) The credit allowed by Section 17053.34 (relating to
2 targeted tax area hiring credit).

3 ~~(P)~~

4 (Q) The credit allowed by Section 17053.49 (relating to
5 qualified property).

6 ~~(Q)~~

7 (R) The credit allowed by Section 17053.70 (relating to
8 enterprise zone sales or use tax credit).

9 ~~(R)~~

10 (S) The credit allowed by Section 17053.74 (relating to
11 enterprise zone hiring credit).

12 ~~(S)~~

13 (T) *The credit allowed by Section 17053.93 (relating to*
14 *qualified contribution credit).*

15 (U) The credit allowed by Section 17054 (relating to credits
16 for personal exemption).

17 ~~(T)~~

18 (V) The credit allowed by Section 17054.5 (relating to the
19 credits for a qualified joint custody head of household and a
20 qualified taxpayer with a dependent parent).

21 ~~(U)~~

22 (W) The credit allowed by Section 17054.7 (relating to the
23 credit for a senior head of household).

24 ~~(V)~~

25 (X) The credit allowed by former Section 17057 (relating to
26 clinical testing expenses).

27 ~~(W)~~

28 (Y) The credit allowed by Section 17058 (relating to
29 low-income housing).

30 ~~(X)~~

31 (Z) The credit allowed by Section 17061 (relating to refunds
32 pursuant to the Unemployment Insurance Code).

33 ~~(Y)~~

34 (AA) Credits for taxes paid to other states allowed by Chapter
35 12 (commencing with Section 18001).

36 ~~(Z)~~

37 (BB) The credit allowed by Section 19002 (relating to tax
38 withholding).

39 (2) Any credit that is partially or totally denied under
40 paragraph (1) shall be allowed to be carried over and applied to

1 the net tax in succeeding taxable years, if the provisions relating
2 to that credit include a provision to allow a carryover when that
3 credit exceeds the net tax.

4 (d) Unless otherwise provided, any remaining carryover of a
5 credit allowed by a section that has been repealed or made
6 inoperative shall continue to be allowed to be carried over under
7 the provisions of that section as it read immediately prior to
8 being repealed or becoming inoperative.

9 (e) (1) Unless otherwise provided, if two or more taxpayers
10 (other than husband and wife) share in costs that would be
11 eligible for a tax credit allowed under this part, each taxpayer
12 shall be eligible to receive the tax credit in proportion to his or
13 her respective share of the costs paid or incurred.

14 (2) In the case of a partnership, the credit shall be allocated
15 among the partners pursuant to a written partnership agreement
16 in accordance with Section 704 of the Internal Revenue Code,
17 relating to partner's distributive share.

18 (3) In the case of a husband and wife who file separate returns,
19 the credit may be taken by either or equally divided between
20 them.

21 (f) Unless otherwise provided, in the case of a partnership, any
22 credit allowed by this part shall be computed at the partnership
23 level, and any limitation on the expenses qualifying for the credit
24 or limitation upon the amount of the credit shall be applied to the
25 partnership and to each partner.

26 (g) (1) With respect to any taxpayer that directly or indirectly
27 owns an interest in a business entity that is disregarded for tax
28 purposes pursuant to Section 23038 and any regulations
29 thereunder, the amount of any credit or credit carryforward
30 allowable for any taxable year attributable to the disregarded
31 business entity shall be limited in accordance with paragraphs (2)
32 and (3).

33 (2) The amount of any credit otherwise allowed under this
34 part, including any credit carryover from prior years, that may be
35 applied to reduce the taxpayer's "net tax," as defined in
36 subdivision (a), for the taxable year shall be limited to an amount
37 equal to the excess of the taxpayer's regular tax (as defined in
38 Section 17062), determined by including income attributable to
39 the disregarded business entity that generated the credit or credit
40 carryover, over the taxpayer's regular tax (as defined in Section

17062), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 17062), determined by including the income attributable to the disregarded business entity, is less than the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (c) and (d).

(h) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-through entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.

(2) For purposes of this subdivision, "eligible pass-through entity" means any partnership or S-"S" corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year the credit is operative.

(3) This subdivision shall apply to credits that become inoperative on or after the operative date of the act adding this subdivision.

SEC. 4. Section 17052.77 is added to the Revenue and Taxation Code, to read:

17052.77. (a) For each taxable year beginning on or after the first January 1 that follows the operative date of this section, and before the fifth January 1 thereafter, there shall be allowed a credit against the "net tax," as defined in Section 17039, in an amount as specified in subdivision (c), for qualified equity investments in a qualified community development entity during the applicable taxable year.

(b) For purposes of this section:

(1) "Qualified community development entity" means:

1 (A) Any domestic corporation or partnership that meets all of
2 the following requirements:

3 (i) The primary mission of the entity is serving or providing
4 investment capital for low-income communities or low-income
5 persons.

6 (ii) The entity maintains accountability to residents of
7 low-income communities through representation on a governing
8 board, an advisory board, or other similar community body.

9 (iii) The entity is certified by the Business, Transportation and
10 Housing Agency as being a qualified community development
11 entity.

12 (B) Any specialized small business investment company, as
13 defined in Section 1044(c)(3) of the Internal Revenue Code.

14 (C) Any community development financial institution, as
15 defined in Section 103 of the Community Development Banking
16 and Financial Institutions Act of 1994 (12 U.S.C. Sec. 4702).

17 (2) “Qualified equity investment” means any equity
18 investment in a qualified community development entity that
19 meets all of the following requirements:

20 (A) The investment is acquired by the taxpayer at its original
21 issue, either directly or through an underwriter, solely in
22 exchange for cash. The requirements of this subparagraph will be
23 satisfied for any equity investment purchased by a subsequent
24 investor, if the equity investment was a qualified equity
25 investment.

26 (B) Substantially all of the cash received in exchange for the
27 equity investment is used by the qualified community
28 development entity to make qualified low-income community
29 investments. The requirement of this subparagraph will be
30 satisfied if at least 85 percent of the aggregate gross assets of the
31 qualified community development entity are invested in qualified
32 low-income investments.

33 (C) The investment is designated by the qualified community
34 development entity to achieve the purposes of the credit allowed
35 under this section. The maximum amount of investments that
36 may be designated by a qualified community development entity
37 under this subparagraph shall not exceed the portion of the credit
38 allocated to the entity under federal law.

39 The term “qualified equity investment” does not include any
40 equity investments issued by a qualified community development

entity more than five years from the date that the entity receives a federal new markets allocation from the Secretary of the United States Treasury. In addition, the rules for stock redemptions and stock distributions in redemption under Section 1202(c)(3) of the Internal Revenue Code shall apply in determining whether an equity investment meets the definition of a “qualified equity investment” under this paragraph.

(3) “Equity investment” means:

(A) Any stock, other than nonqualified preferred stock as defined in Section 351(g)(2) of the Internal Revenue Code, in an entity that is a corporation.

(B) Any capital interest in a partnership or limited partnership entity.

(4) “Qualified low-income community investment” includes:

(A) Any equity investment in, or loan to, any qualified active low-income community business located in this state.

(B) The purchase from another community development entity of any loan that is a qualified low-income community investment.

(C) Financial counseling and other services to residents of, and businesses located in, low-income communities located in this state.

(D) Any equity investment in, or loan to, a qualified community development entity located in this state.

(5) “Qualified active low-income community business” means:

(A) In the case of a corporation, partnership, or limited partnership, the following requirements shall be satisfied during the taxable year:

(i) At least 50 percent of the total gross income of the entity is derived from the active conduct of a business within any low-income community located in this state.

(ii) A substantial portion of the use of the tangible personal property, whether owned or leased, is located within any low-income community located in this state.

(iii) A substantial portion of the services performed by the entity’s employees, on behalf of the entity, are performed in any low-income community located in this state.

(iv) Less than 5 percent of the average of the aggregate unadjusted basis of the property of the entity is attributable to

1 collectibles, as defined in Section 408(m)(2) of the Internal
2 Revenue Code, other than collectibles that are primarily held for
3 sale to customers in the entity's ordinary course of business.

4 (v) Less than 5 percent of the average of the aggregate
5 unadjusted basis of the property of the entity is attributable to
6 nonqualified financial property, as defined in Section 1397C(e)
7 of the Internal Revenue Code.

8 (B) Any business carried on by an individual as a proprietor of
9 a business that meets the requirements of clauses (i) to (v),
10 inclusive, of subparagraph (A).

11 (C) Any trade or business operated as a separate division of a
12 corporation, partnership, or limited partnership, if the separate
13 trade or business otherwise meets the requirements of clauses (i)
14 to (v), inclusive, of subparagraph (A).

15 (6) "Low-income community" means:

16 (A) In the case of an area located in this state that is tracted as
17 part of any population census tract:

18 (i) The poverty rate for the tract is at least 20 percent.

19 (ii) In the case of a tract located outside of a metropolitan area,
20 the median family income for the tract does not exceed 80
21 percent of the statewide median family income.

22 (iii) In the case of a tract located within a metropolitan area,
23 the median family income for the tract does not exceed 80
24 percent of the greater of the statewide median family income or
25 the metropolitan area family income.

26 (B) In the case of an area located in this state that is not tracted
27 under a population census tract, the equivalent county divisions,
28 as defined by the Bureau of the Census, shall be used for
29 purposes of determining poverty rates and median family
30 income.

31 (c) The credit allowed under this section may be taken in the
32 taxable year that the qualified equity investment is made and in
33 each year following the year that the initial qualified investment
34 is made. The amount of the credit shall be computed as follows:

35 (1) For the first three taxable years for which this section is
36 operative, the credit shall be in an amount equal to 5 percent of
37 the original issue price of the qualified equity investment.

38 (2) For the fourth taxable year following the first taxable year
39 for which this section is operative, the credit shall be in an

1 amount equal to 6 percent of the original issue price of the
2 qualified equity investment.

3 (d) The basis of any qualified equity investment shall be
4 reduced by the amount of any credit allowable under this section.

5 (e) If, at any time during the seven-year period beginning on
6 the date of the original issue of a qualified equity investment in a
7 qualified community development entity, there is a recapture
8 event with respect to the equity investment, the tax imposed
9 under this chapter for the taxable year the recapture event occurs
10 shall be increased by the credit recapture amount.

11 (f) For purposes of this section, a “recapture event” occurs
12 when all of the following occur:

13 (1) The qualified community development entity that issued
14 the qualified equity investment ceases to be a qualified
15 community development entity.

16 (2) The proceeds of an equity investment cease to meet the
17 requirements of a qualified equity investment under
18 subparagraph (B) of paragraph (2) of subdivision (b).

19 (3) The qualified equity investment is redeemed by the
20 qualified community development entity.

21 (g) The “credit recapture amount” is the aggregate amount of
22 the credit, to the extent that the credit reduced tax liability,
23 allowed for all prior taxable years, plus interest.

24 (h) In the case where the credit allowed by this section
25 exceeds the “net tax,” the excess may be carried over to reduce
26 the “net tax” in the following year, and succeeding years if
27 necessary, until the credit is exhausted.

28 (i) This section shall become operative on the first January 1
29 following the first notice that is made to the Franchise Tax Board
30 under Section 7091.2 of the Government Code.

31 SEC. 5. Section 17053.93 is added to the Revenue and
32 Taxation Code, to read:

33 17053.93. (a) There shall be allowed as a credit against the
34 “net tax,” as defined in Section 17039, an amount equal to 20
35 percent of the fair market value of any qualified contribution
36 made to a qualified donee on or after the first January 1 that
37 follows the operative date of this section, and before the fifth
38 January 1 thereafter, during the applicable taxable year.

39 (b) For purposes of this section, “qualified contribution”
40 means a contribution of cash or real property or any perpetual

1 interest therein. In the case of a contribution of real property, a
2 qualified contribution may include undeveloped or developed
3 land if all of the following are met:

4 (1) The real property is located in California.

5 (2) At the time of the qualified contribution, the taxpayer is
6 not under a mandate by a local agency to provide affordable or
7 low-income housing.

8 (3) The real property has been approved for acceptance by the
9 qualified donee.

10 (c) For purposes of this section, “qualified donee” means a
11 nonprofit corporation, including, but not limited to, a land
12 conservancy or land trust established in this state, organized
13 under Division 2 (commencing with Section 5000) of Title 1 of
14 the Corporations Code, the principal purpose of which is to
15 enable ownership, development, or management of housing or
16 community development projects for persons who are
17 disadvantaged, have a transitional need, have a low income, or
18 are a member of a targeted group, as defined in Section 51(d)(1)
19 of the Internal Revenue Code.

20 (d) A qualified donee may hold multiple parcels of land that
21 are not required to be adjacent to each other, and may be located
22 in different political and geographic subdivisions of this state.

23 (e) In the case of a pass-through entity, the fair market value
24 of any qualified contribution shall be passed through to the
25 owners of the pass-through entity in accordance with their
26 interest in the pass-through entity as of the date of the qualified
27 contribution. For purposes of this subdivision, the term
28 “pass-through entity” means any estate, trust, partnership, or “S”
29 corporation.

30 (f) Upon transfer of title of the qualified contribution, the
31 qualified donee shall provide a certificate to the taxpayer who
32 made the qualified contribution. The certificate shall contain a
33 statement signed and dated by a person authorized by that
34 organization and shall contain the following information: a
35 description of the qualified property, including its parcel number
36 and location, if any, the name of the taxpayer donor, and the
37 name and address of the donee. Upon the request of the
38 Franchise Tax Board, the taxpayer shall provide a copy of the
39 certification to the Franchise Tax Board.

1 (g) If the credit allowed by this section exceeds the “net tax,”
2 the excess may be carried over to reduce the “net tax” in the
3 following year, and succeeding years if necessary, until the credit
4 is exhausted.

5 (h) This credit is in lieu of any other credit or deduction that
6 the taxpayer may otherwise claim pursuant to this part with
7 respect to the qualified contribution.

8 (i) This section shall become operative on the first January 1
9 following the first notice that is made to the Franchise Tax Board
10 under Section 7091.2 of the Government Code.

11 SEC. 6. Section 23036 of the Revenue and Taxation Code is
12 amended to read:

13 23036. (a) (1) The term “tax” includes any of the following:

14 (A) The tax imposed under Chapter 2 (commencing with
15 Section 23101).

16 (B) The tax imposed under Chapter 3 (commencing with
17 Section 23501).

18 (C) The tax on unrelated business taxable income, imposed
19 under Section 23731.

20 (D) The tax on S-“S” corporations imposed under Section
21 23802.

22 (2) The term “tax” does not include any amount imposed
23 under paragraph (1) of subdivision (e) of Section 24667 or
24 paragraph (2) of subdivision (f) of Section 24667.

25 (b) For purposes of Article 5 (commencing with Section
26 18661) of Chapter 2, Article 3 (commencing with Section 19031)
27 of Chapter 4, Article 6 (commencing with Section 19101) of
28 Chapter 4, and Chapter 7 (commencing with Section 19501) of
29 Part 10.2, and for purposes of Sections 18601, 19001, and 19005,
30 the term “tax” also includes all of the following:

31 (1) The tax on limited partnerships, imposed under Section
32 ~~17935~~, ~~17935~~ or *Section 23081*, the tax on limited liability
33 companies, imposed under Section ~~17941~~, ~~17941~~ or *Section*
34 *23091*, and the tax on registered limited liability partnerships and
35 foreign limited liability partnerships imposed under Section
36 ~~17948~~ or *Section 23097*.

37 (2) The alternative minimum tax imposed under Chapter 2.5
38 (commencing with Section 23400).

39 (3) The tax on built-in gains of S-“S” corporations, imposed
40 under Section 23809.

(4) The tax on excess passive investment income of S-“S” corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits are allowed against the “tax” in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the “tax,” allow the excess to be carried over to offset the “tax” in succeeding taxable years, except for those credits that are allowed to reduce the “tax” below the tentative minimum tax, as defined by Section 23455. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits that are allowed to reduce the “tax” below the tentative minimum tax, as defined by Section 23455.

(5) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following applies:

(1) No credit ~~may~~ *shall* reduce the “tax” below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by former Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by former Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by former Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) ~~The~~ *For each taxable year beginning on or after January 1, 1994, the credit allowed by former* Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by former Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).

(P) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).

(Q) The credit allowed by Section 23649 (relating to qualified property).

(R) *The credit allowed by Section 23677 (relating to qualified equity investment).*

(S) *The credit allowed by Section 23693 (relating to qualified contribution credit).*

(2) No credit against the tax ~~may~~ *shall* reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) is allowed to be carried over to reduce the “tax” in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative ~~is~~ *shall continue to be* allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer is eligible to receive the tax credit in proportion to ~~his or her~~ *its* respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an ~~S~~ *“S”* corporation, any credit allowed by this part ~~is~~ *shall be* computed at the ~~S~~ *“S”* corporation level, and any limitation on the expenses

1 qualifying for the credit or limitation upon the amount of the
2 credit ~~applies~~ *shall be applied* to the ~~S~~ “S” corporation and to
3 each shareholder.

4 (i) (1) With respect to any taxpayer that directly or indirectly
5 owns an interest in a business entity that is disregarded for tax
6 purposes pursuant to Section 23038 and any regulations
7 thereunder, the amount of any credit or credit carryforward
8 allowable for any taxable year attributable to the disregarded
9 business entity is limited in accordance with paragraphs (2) and
10 (3).

11 (2) The amount of any credit otherwise allowed under this
12 part, including any credit carryover from prior years, that may be
13 applied to reduce the taxpayer’s “tax,” as defined in subdivision
14 (a), for the taxable year is limited to an amount equal to the
15 excess of the taxpayer’s regular tax (as defined in Section
16 23455), determined by including income attributable to the
17 disregarded business entity that generated the credit or credit
18 carryover, over the taxpayer’s regular tax (as defined in Section
19 23455), determined by excluding the income attributable to that
20 disregarded business entity. No credit is allowed if the taxpayer’s
21 regular tax (as defined in Section 23455), determined by
22 including the income attributable to the disregarded business
23 entity is less than the taxpayer’s regular tax (as defined in Section
24 23455), determined by excluding the income attributable to the
25 disregarded business entity.

26 (3) If the amount of a credit allowed pursuant to the section
27 establishing the credit exceeds the amount allowable under this
28 subdivision in any taxable year, the excess amount may be
29 carried over to subsequent taxable years pursuant to subdivisions
30 (d), (e), and (f).

31 (j) (1) Unless otherwise specifically provided, in the case of a
32 taxpayer that is a partner or shareholder of an eligible
33 pass-through entity described in paragraph (2), any credit passed
34 through to the taxpayer in the taxpayer’s first taxable year
35 beginning on or after the date the credit is no longer operative
36 may be claimed by the taxpayer in that taxable year,
37 notwithstanding the repeal of the statute authorizing the credit
38 prior to the close of that taxable year.

39 (2) For purposes of this subdivision, “eligible pass-through
40 entity” means any partnership or ~~S~~ “S” corporation that files its

1 return on a fiscal year basis pursuant to Section 18566, and that is
2 entitled to a credit pursuant to this part for the taxable year that
3 begins during the last year a credit is operative.

4 (3) This subdivision applies to credits that become inoperative
5 on or after the operative date of the act adding this subdivision.

6 SEC. 7. Section 23677 is added to the Revenue and Taxation
7 Code, to read:

8 23677. (a) For each taxable year beginning on or after the
9 first January 1 that follows the operative date of this section, and
10 before the fifth January 1 thereafter, there shall be allowed a
11 credit against the “tax,” as defined in Section 23036, in an
12 amount as specified in subdivision (c), for qualified equity
13 investments in a qualified community development entity during
14 the applicable taxable year.

15 (b) For purposes of this section:

16 (1) “Qualified community development entity” means:

17 (A) Any domestic corporation or partnership that meets all of
18 the following requirements:

19 (i) The primary mission of the entity is serving or providing
20 investment capital for low-income communities or low-income
21 persons.

22 (ii) The entity maintains accountability to residents of
23 low-income communities through representation on a governing
24 board, an advisory board, or other similar community body.

25 (iii) The entity is certified by the Business, Transportation and
26 Housing Agency as being a qualified community development
27 entity.

28 (B) Any specialized small business investment company, as
29 defined in Section 1044(c)(3) of the Internal Revenue Code.

30 (C) Any community development financial institution, as
31 defined in Section 103 of the Community Development Banking
32 and Financial Institutions Act of 1994 (12 U.S.C. Sec. 4702).

33 (2) “Qualified equity investment” means any equity
34 investment in a qualified community development entity that
35 meets all of the following requirements:

36 (A) The investment is acquired by the taxpayer at its original
37 issue, either directly or through an underwriter, solely in
38 exchange for cash. The requirements of this subparagraph will be
39 satisfied for any equity investment purchased by a subsequent

1 investor, if the equity investment was a qualified equity
2 investment.

3 (B) Substantially all of the cash received in exchange for the
4 equity investment is used by the qualified community
5 development entity to make qualified low-income community
6 investments. The requirement of this subparagraph will be
7 satisfied if at least 85 percent of the aggregate gross assets of the
8 qualified community development entity are invested in qualified
9 low-income investments.

10 (C) The investment is designated by the qualified community
11 development entity for achieving the purposes of the credit
12 allowed under this section. The maximum amount of investments
13 that may be designated by a qualified community development
14 entity under this subparagraph may not exceed the portion of the
15 credit allocated to the entity under federal law.

16 The term “qualified equity investment” does not include any
17 equity investments issued by a qualified community development
18 entity more than five years from the date that the entity receives
19 a federal new markets allocation from the Secretary of the United
20 States Treasury. In addition, the rules for stock redemptions and
21 stock distributions in redemption under Section 1202(c)(3) of the
22 Internal Revenue Code shall apply in determining whether an
23 equity investment meets the definition of a “qualified equity
24 investment” under this paragraph.

25 (3) “Equity investment” means:

26 (A) Any stock, other than nonqualified preferred stock as
27 defined in Section 351(g)(2) of the Internal Revenue Code, in an
28 entity that is a corporation.

29 (B) Any capital interest in a partnership or limited partnership
30 entity.

31 (4) “Qualified low-income community investments” includes:

32 (A) Any equity investment in, or loan to, any qualified active
33 low-income community business located in this state.

34 (B) The purchase from another community development entity
35 of any loan that is a qualified low-income community
36 investment.

37 (C) Financial counseling and other services to residents of, and
38 businesses located in, low-income communities located in this
39 state.

1 (D) Any equity investment in, or loan to, a qualified
2 community development entity located in this state.

3 (5) “Qualified active low-income community business”
4 means:

5 (A) In the case of a corporation, partnership, or limited
6 partnership, the following requirements must be satisfied during
7 the taxable year:

8 (i) At least 50 percent of the total gross income of the entity is
9 derived from the active conduct of a qualified business within
10 any low-income community located in this state.

11 (ii) A substantial portion of the use of the tangible personal
12 property, whether owned or leased, is located within any
13 low-income community located in this state.

14 (iii) A substantial portion of the services performed by the
15 entity’s employees, on behalf of the entity, are performed in any
16 low-income community located in this state.

17 (iv) Less than 5 percent of the average of the aggregate
18 unadjusted basis of the property of the entity is attributable to
19 collectibles, as defined in Section 408(m)(2) of the Internal
20 Revenue Code, other than collectibles that are primarily held for
21 sale to customers in the entity’s ordinary course of business.

22 (v) Less than 5 percent of the average of the aggregate
23 unadjusted basis of the property of the entity is attributable to
24 nonqualified financial property, as defined in Section 1397C(e)
25 of the Internal Revenue Code.

26 (B) Any business carried on by an individual as a proprietor of
27 a business that meets the requirements of clauses (i) to (v),
28 inclusive, of subparagraph (A).

29 (C) Any trade or business operated as a separate division of a
30 corporation, partnership, or limited partnership, if the separate
31 trade or business otherwise meets the requirements of clauses (i)
32 to (v), inclusive, of subparagraph (A).

33 (6) “Low-income community” means:

34 (A) In the case of an area located in this state that is tracted as
35 part of any population census tract:

36 (i) The poverty rate for the tract is at least 20 percent.

37 (ii) In the case of a tract located outside of a metropolitan area,
38 the median family income for the tract does not exceed 80
39 percent of the statewide median family income.

1 (iii) In the case of a tract located within a metropolitan area,
2 the median family income for the tract does not exceed 80
3 percent of the greater of the statewide median family income or
4 the metropolitan area family income.

5 (B) In the case of an area located in this state that is not tracted
6 under a population census tract, the equivalent county divisions,
7 as defined by the Bureau of the Census, shall be used for
8 purposes of determining poverty rates and median family
9 income.

10 (c) The credit allowed under this section may be taken in the
11 taxable year that the qualified equity investment is made and in
12 each year following the year that the initial qualified investment
13 is made. The amount of the credit shall be computed as follows:

14 (1) For the first three taxable years for which this section is
15 operative, the credit shall be in an amount equal to 5 percent of
16 the original issue price of the qualified equity investment.

17 (2) For the fourth taxable year following the first taxable year
18 for which this section is operative, the credit shall be in an
19 amount equal to 6 percent of the original issue price of the
20 qualified equity investment.

21 (d) The basis of any qualified equity investment shall be
22 reduced by the amount of any credit allowable under this section.

23 (e) If, at any time during the seven-year period beginning on
24 the date of the original issue of a qualified equity investment in a
25 qualified community development entity, there is a recapture
26 event with respect to the equity investment, the tax imposed
27 under this chapter for the taxable year the recapture event occurs
28 shall be increased by the credit recapture amount.

29 (f) For purposes of this section, a “recapture event” occurs
30 when:

31 (1) The qualified community development entity that issued
32 the qualified equity investment ceases to be a qualified
33 community development entity.

34 (2) The proceeds of an equity investment cease to meet the
35 requirements of a qualified equity investment under
36 subparagraph (B) of paragraph (2) of subdivision (b).

37 (3) The qualified equity investment is redeemed by the
38 qualified community development entity.

1 (g) The “credit recapture amount” shall be the aggregate
2 amount of the credit, to the extent the credit reduced tax liability,
3 allowed for all prior taxable years, plus interest.

4 (h) In the case where the credit allowed by this section
5 exceeds the “tax,” the excess may be carried over to reduce the
6 “tax” in the following year, and succeeding years if necessary,
7 until the credit is exhausted.

8 (i) This section shall become operative on the first January 1
9 following the first notice that is made to the Franchise Tax Board
10 under Section 7091.2 of the Government Code.

11 SEC. 8. Section 23693 is added to the Revenue and Taxation
12 Code, to read:

13 23693. (a) There shall be allowed as a credit against the
14 “tax,” as defined in Section 23036, an amount equal to 20 percent
15 of the fair market value of any qualified contribution made to a
16 qualified donee on or after the first January 1 that follows the
17 operative date of this section and before the fifth January 1
18 thereafter, during the applicable taxable year.

19 (b) For purposes of this section, “qualified contribution”
20 means a contribution of cash or real property or any perpetual
21 interest therein. In the case of a contribution of real property, a
22 qualified contribution may include undeveloped or developed
23 land if all of the following are met:

24 (1) The real property is located in California.

25 (2) At the time of the qualified contribution, the taxpayer is
26 not under a mandate by a local agency to provide affordable or
27 low-income housing.

28 (3) The real property has been approved for acceptance by the
29 qualified donee.

30 (c) For purposes of this section, “qualified donee” means a
31 nonprofit corporation, including, but not limited to, a land
32 conservancy or land trust established in this state, organized
33 under Division 2 (commencing with Section 5000) of Title 1 of
34 the Corporations Code, the principal purpose of which is to
35 enable ownership, development, or management of housing or
36 community development projects for persons who are
37 disadvantaged, have a transitional need, have a low income, or
38 are a member of a targeted group, as defined in Section 51(d)(1)
39 of the Internal Revenue Code.

1 (d) A qualified donee may hold multiple parcels of land that
2 are not required to be adjacent to each other, and may be located
3 in different political and geographic subdivisions of this state.

4 (e) In the case of a pass-through entity, the fair market value
5 of any qualified contribution shall be passed through to the
6 owners of the pass-through entity in accordance with their
7 interest in the pass-through entity as of the date of the qualified
8 contribution. For purposes of this subdivision, the term
9 “pass-through entity” means any estate, trust, partnership, or “S”
10 corporation.

11 (f) Upon transfer of title of the qualified contribution, the
12 qualified donee shall provide a certificate to the taxpayer who
13 made the qualified contribution. The certificate shall contain a
14 statement signed and dated by a person authorized by that
15 organization and shall contain the following information: a
16 description of the qualified property, including its parcel number
17 and location, if any, the name of the taxpayer donor, and the
18 name and address of the donee. Upon the request of the
19 Franchise Tax Board, the taxpayer shall provide a copy of the
20 certification to the Franchise Tax Board.

21 (g) If the credit allowed by this section exceeds the “tax,” the
22 excess may be carried over to reduce the “tax” in the following
23 year, and the succeeding years if necessary, until the credit is
24 exhausted.

25 (h) This credit is in lieu of any other credit or deduction that
26 the taxpayer may otherwise claim pursuant to this part with
27 respect to the qualified contribution.

28 (i) This section shall become operative on the first January 1
29 following the first notice that is made to the Franchise Tax Board
30 under Section 7091.2 of the Government Code.

31 SEC. 9. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the
36 penalty for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition of a
38 crime within the meaning of Section 6 of Article XIII B of the
39 California Constitution.

O